

ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe and claim the subject matter that applicants regard as the invention.

Claims 1-27 remain in this application. Claims 1-25 have been indicated as being allowed.

Applicant notes that claim 1 was amended to properly recite that the input unit operated by the hearing device user is associated with the manual adjustment process, rather than the automatic adjustment process, where it was erroneously previously placed. Applicant believes that this does not raise new issues, as the Examiner has indicated that one reason for allowance is that the prior art does not teach both manual and automatic adjustment of a hearing device, and since these features are still present in the claim, the claim is clearly patentable over the references for at least that reason.

Claims 26 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brillhart *et al.* (U.S. 5,303,306) in view of Topholm (U.S. 4,947,432). For the following reasons, the rejections are respectfully traversed.

Claim 26 recites a system including an “input unit including input means to generate information for both an automatic adjustment of parameters and a manual adjustment of parameters of a parameter set of the hearing device including at least one parameter other than volume”.

As discussed in the prior actions, none of the references teach any system that can adjust parameters *both* automatically *and* manually, as recited in the claim. Brillhart merely teaches the selection of predetermined discrete listening situations (see col. 3, lines 38-42), while permitting a manual adjustment of volume on the remote control (see col. 3, lines 46-47), without any teaching of manually fine-tuning of any non-volume parameters. However, Brillhart fails to teach both the automatic adjustment, and then manual fine-tuning adjustment, of the parameters (including more than just volume). Instead, only manual adjustments appear to be provided for, with no suggestion of providing both in sequence. None of the additional references overcome these

shortcomings, and thus claim 26 is patentable over the references, as is claim 27 which depends on claim 26.

Furthermore, claim 26 recites that the system includes:

transmission means to transmit the information to the hearing device, wherein the adjustment of the parameters is performed in the sense of "better understanding", at one hand, and in the sense of "more pleasant hearing", on the other hand.

The prior art does not teach such a feature.

The Examiner cites Topholm as teaching a hearing aid with a selection for listening to music or reading in a car. However, there is no teaching that these are related to "better understanding" or "more pleasant hearing". Instead, such selection could be, for example, merely for the purpose, in *both* cases, for more pleasant hearing by tailoring the device for the location. There is no teaching of adjustment between such "better understanding" and "more pleasant hearing" as recited in the claim. Accordingly, for this reason as well, claim 26 is patentable over the references.

In addition, the Examiner has failed to make a *prima facie* case of obviousness (MPEP §2142). To support a *prima facie* case of obviousness, the Examiner must show that there is some *suggestion* or *motivation* to modify the reference (MPEP §2143.01), or the Examiner must provide some other logical argument as to why the invention is obvious. Furthermore, the Examiner is required to ***ascertain the level of skill in the art***, and then ***factually analyze*** why one skilled in the art, starting with the problem to be solved by the inventor, given the cited references, would have found it obvious to obtain the claimed invention. See *KSR Int'l Co. v. Teleflex*, 550 U.S.____ (2007) (first paragraph of page 2 of the published opinion, citing *Graham .v John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966)).

Thus, to be "obvious", in addition to determining the scope and content of the prior art and the differences between the prior art and the claims, the Examiner must identify the *level of skill in the art* (see *KSR Int'l Co. v. Teleflex*, 550 U.S.____ (2007) (first paragraph of page 2 of the published opinion, citing *Graham .v John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966))), and then he must show *why* one skilled in the art

would arrive at the claimed invention, given these findings and the skill generally available to one skilled in the art (see *KSR* at pages 20-21 of the published opinion). This, the Examiner has not done, and thus the Examiner has failed to support a prima facie case of obviousness. In fact, the discussion above supports the fact that such modifications suggested by the Examiner are not within the skill of the art. Accordingly, the rejections for obviousness cannot stand.

Finally, applicant notes that the Examiner has indicated in the Office action Reasons for Allowance that he considers various claim elements to be taught by the prior art. Applicant hereby goes on the record stating that applicant does not necessarily concur with the Examiner's assessment of what the prior art teaches with respect to the claim language.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 35469US1.

Respectfully submitted,
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